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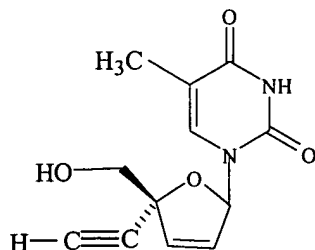
APPLICANT(S) : Cheng, et al.
SERIAL NO. : 10/781,305
FILED : February 18, 2004
FOR : Anti-viral Nucleoside Analogs and Methods for Treating Viral Infections, Especially HIV Infections

GROUP ART UNIT : 1614
Examiner : Traviss C. McIntosh III

Mail Stop: Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia, 22313-1450

**Election of Invention in Response
to Restriction Requirement**

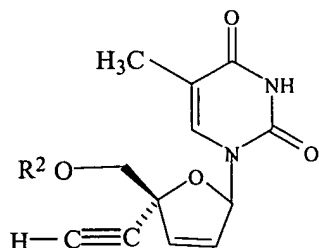
In response to the Examiner's correspondence dated May 1, 2006, pursuant to the Examiner's restriction requirement in the above-referenced patent application, Applicants provisionally elect with traverse to prosecute the invention of group VII, namely claims 1-9, 11, 13-15, and 42-43, which are drawn to compositions of formula IV wherein Z is O and B is a pyrimidine, classified in class 514, subclass 49. In addition, Applicants elect with traverse to prosecute a single species falling with group VII, wherein B is a uracil base (the second of the six nucleoside base structures set forth in claim 1), R is CH₃, R² is H, R³ is an ethynyl group (-C≡C-H) and R3a and R3b are both H. This compound is also represented in figure 1 as 4'ethynyl D4T.



Claims 1-5, claim 22 and 42-43 are readable thereon.

Restriction Requirement
S.N. 10/781,305
Y03-100US

Notwithstanding Applicants' election of a single species, it is respectfully requested that the Examiner withdraw his requirement for a single species and instead consider a broader group of compounds wherein all the groups are as described above, except that R^2 may be H, an acyl group, an alkyl or ether group as claimed, a phosphate, diphosphate, a triphosphate or a phosphodiester group inasmuch as the elected invention is now directed to compounds sharing a single structural feature which have a common utility. Consequently, it is respectfully submitted that the elected invention with the broader R^2 groups as set forth below, meets the requirements of *In re Harnich* and *Ex parte Hozumi*.



Claims 1-5, claim 22 and 42-43 are readable thereon.

Notwithstanding Applicants species election, Applicants respectfully traverse the Examiner's requirement for restriction. Applicants respectfully request the Examiner reconsider his restriction requirement in its entirety. Applicants respectfully submit that prosecution of all of previously elected claims without regard to the imposed restriction will allow the Examiner to examine all claims without being subjected to an undue burden as discussed hereinbelow.

According to M.P.E.P. §803, restriction by the Examiner of patentably distinct inventions is proper if the claimed inventions are independent and a *serious burden* would be placed on the Examiner if restriction was not required. Applicant respectfully submits that the presentation of the originally filed claims would not place such a serious burden on the Examiner as to require restriction. All of the originally restricted claims are directed to patentably distinct chemical

compounds/compositions or methods of using these compounds/compositions which would not impose a heavy burden of examination on the part of the Examiner.

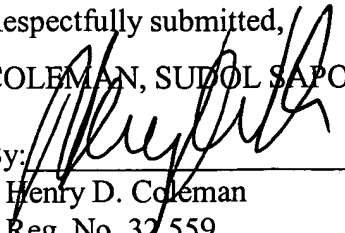
Thus, it is Applicants' view that any search the Examiner would need to conduct in examining the instant application of all the claims would not be unduly burdensome. That would not be to say that the examination would not be rigorous or even time-consuming, but that such effort would not meet the requirements of MPEP§803. It is respectfully submitted that the examination of all of the originally filed claims in the instant application would not place such a serious burden on the Examiner as to require restriction.

Applicants understand the general policy considerations for the Patent Office's requirement for restriction in certain instances. In this instance, however, those considerations do not weigh in favor of restricting the inventions here. In determining the appropriateness of restriction, one must also consider the countervailing consideration that, in each instance, Applicants wish the Patent Office examine their patent application with a certain degree of "administrative efficiency" and wish to have patent claims issue which reflect the breadth of their invention.

Applicants respectfully submit that the originally filed claims are sufficiently narrow to allow the Examiner to determine patentability without being subjected to the serious burden referred to in M.P.E.P. §803. Consequently, Applicant respectfully requests that the Examiner withdraw the restriction requirement. Alternatively, in the interest of administrative efficiency, Applicants respectfully request that the Examiner extend consideration to examining claims 1-5 with respect to the invention of group VII, wherein R^2 has the broader construction as set forth in the second figure above (i.e., not just H) without further limiting such examination to a single species (R^2 is only H) as set forth in the first figure above.

The Examiner is cordially requested to call the undersigned attorney if the Examiner believes that a telephonic discussion may materially advance the prosecution of the instant application in any way.

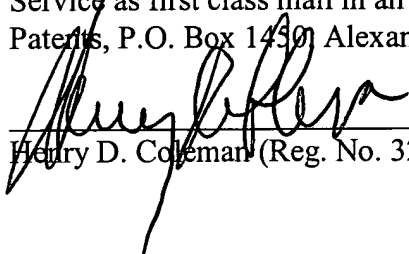
Respectfully submitted,
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Dated: June 1, 2006

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450 Alexandria, Virginia, 22313-1450, dated June 1, 2006.


Henry D. Coleman (Reg. No. 32,559)